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United States
Department of
Agriculture

DEC 10 1998

Food and
Consumer
Service

Reply to
Attn. of: SP 99-06

Subject: School Programs: Implementation of Public Law 105-336
(SP 99-02)

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas,
(Child Nutrition Programs) Missouri ED, Montana OPI,
Nebraska ED, North Dakota,
South Dakota, Utah and
Wyoming ED

Our Headquarters' office sent a copy of their December 3, 1998 memorandum on the above subject directly to each State Director (copy attached). This was their effort to get this much needed information out to everyone as quickly as possible.

We feel the need to reissue it through our numbered memoranda series so that we all have a Regional reference point when discussing or referring to these issues in the future. As you are aware, we cite our Policy Memorandum numbers in our School Programs Policy Index and in our management evaluation review forms and reports. Several states have also brought this point up to us, since that is how they, too, organize their policy.

The attachment is exactly what you received from our Headquarters. Please note however, that there is a error in their memorandum. The last line on page four should read "supplements served to children up through age 18 and children".

If you have any questions, please contact us at (303) 844-0355.

Ann C. DeGroat

ANN C. DEGROAT
Regional Director
Child Nutrition Programs

Attachment

DECEMBER 3, 1998

SUBJECT: School Programs: Implementation of Public Law 105-336 (SP 99-2)

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
All States

On October 31, 1998, President Clinton signed the Child Nutrition Reauthorization Act of 1998 (Public Law 105-336). Provisions in this law affect the administration of the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP) and State Administrative Expense (SAE) Funds. We intend to publish regulations to implement these provisions as soon as possible. However, except as noted below, these provisions must be implemented in accordance with the statutory effective date. This memorandum provides guidance for State agencies (SA) to use until final rules are published.

WAIVER OF WEIGHTED AVERAGES

Section 102(b) amended section 9(f) of the National School Lunch Act (NSLA) (42 U.S.C.1758(f)) by adding paragraph (5) to waive the requirement that the Secretary of Agriculture require the use of weighted averages for nutrient analyses of school lunches and breakfasts. This waiver applies during the period ending September 30, 2003. The Department of Agriculture (USDA) has already authorized a waiver through School Year (SY) 1999/2000 of weighted averages for schools using nutrient standard menu planning and has published a proposed rule that would grant a permanent waiver for schools using certain reasonable alternatives to the regulatory menu planning systems. This statutory waiver extends to all schools using nutrient analysis as well as to SAs conducting independent analysis as part of their ongoing reviews of schools' compliance with the nutrition standards without requesting a formal waiver. It should be noted that the statute applies only to requirements imposed by USDA. The provision does not prohibit SAs from continuing to require the use of weighted averages by schools conducting nutrient analysis nor does it prohibit SAs from using weighted averages when doing nutrient analyses as a part of nutrition reviews of schools using food based menu planning systems.

FOOD SAFETY INSPECTIONS

Section 102(c) amended section 9 of the NSLA (42 U.S.C. 1758) by adding subsection (h) to require schools participating in the NSLP or the SBP to obtain food safety inspections conducted by a State or local governmental agency responsible for such inspections at least once a year if a State or local governmental agency does not otherwise require inspections. This provision does not apply to schools that must comply with State or local requirements for food safety inspections even if the time frames for these inspections are less frequent than annual. Moreover, if a State or local governmental agency responsible for food safety inspections conducts voluntary inspections in schools, these inspections may be counted toward meeting this requirement.

SINGLE AGREEMENTS/CLAIMS

Section 102(d) amended section 9 of the NSLA (42 U.S.C. 1758) by establishing two requirements with respect to school food authorities (SFA) which administer any combination of the Child Nutrition Programs under the same State administering agency. First, the SA must use a single State/local agreement for all programs operated by the SFA under that SA. This also means that multiple programs operated under an alternate SA must be combined into a single agreement. Moreover, these agreements must be permanent and may be amended as necessary. Second, a SA must use a common reimbursement form to claim meals under all of the programs. Previously, single agreements and common claim forms were permitted at SA option for SFAs administering multiple Child Nutrition Programs under a single SA.

We are providing a general waiver for 2 years for this provision as it pertains to claims, because many SAs have insufficient computer resources to make the necessary changes due to the potential difficulties rising from the preparations for the year 2000. We are also providing a waiver of the requirement for single agreements until SY 1999/2000, because agreements for this SY have already been signed.

Congress intended these provisions to provide both SAs and school districts with additional administrative flexibility. In the Conference Report for Public Law 105-336, the Conference Committee also expressed the view that SAs may conduct consolidated reviews of the school meal programs and the Child and Adult Care Food Program (CACFP) when the school(s) operate all of these programs. Moreover, the Conference Committee stated that, when the same school food service personnel administer the Summer Food Service Program (SFSP) as well as the school meal programs, the SA need not conduct a review of the summer program in the same year in which the school food service operations have been reviewed and determined to be satisfactory. The

Conference Committee expects this flexibility to result in savings at the State level but notes that States may conduct additional reviews when they deem it appropriate.

Finally, to provide an additional measure of flexibility, the Conference Report makes clear that school districts may prepare meals for CACFP and SFSP using whatever approved menu planning option they employ in the school meal programs. CACFP and SFSP regulations already permit this flexibility.

PROVISION 2/PROVISION 3

Section 103(a) amended section 11(a)(1) of the NSLA (42 U.S.C. 1759a(a)(1)) to establish a 4 year cycle for schools operating under Provision 2. Schools currently participating under Provision 2 will continue under their 3 or 5 year cycle. At the end of that cycle, they may apply for an extension, and if they are approved, the new cycle will be for 4 years. Any school establishing participation in Provision 2 on or after October 1, 1998, will be approved for a 4 year cycle.

Section 103(c) amended section 11 by adding subsection (f) to require USDA to provide grants in each of Fiscal Year (FY) 2000 and 2001 to not more than 10 SAs to enable them to identify schools that could benefit from participating in Provision 2 or Provision 3, make school districts aware of these schools, and provide technical assistance to enable schools to evaluate and receive benefits under these options. We will issue a separate notification to SAs outlining approval criteria and soliciting applications for these grants.

ROUNDING PROCEDURES FOR RATE ADJUSTMENTS

Section 103(b) amended section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759a(a)(3)(B)) and section 4(b) of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1773(b)) to require all adjustments to the reimbursement rates, including severe need breakfast rates, to be rounded down to the nearest whole cent. This provision makes the rounding procedure for free and reduced price reimbursement consistent with the procedure for paid reimbursement. This change will be effective July 1, 1999, for SY 1999/2000 and those that follow and will be implemented through our normal annual rate adjustment notice.

CRIMINAL PENALTIES

Section 104(b) amended section 12(g) of the NSLA (42 U.S.C. 1760(g)) to increase to \$25,000 the maximum fine for embezzling, willfully misapplying, stealing or obtaining by fraud funds, assets or property acquired under the NSLA or CNA.

BUY AMERICAN

Section 104(d) amended section 12 of the NSLA (42 U.S.C. 1760) to require SFAs participating in the NSLP and SBP in the contiguous United States (U.S.) to purchase for those programs, to the maximum extent practicable, domestic commodities or products. For purposes of this provision, the term “domestic food commodity or product” means agricultural commodities produced in the U.S. and food products processed in the U.S. substantially using agricultural commodities that are produced in the U.S. The Conference Report accompanying Public Law 105-336 makes it clear that the term “substantially” means that over 51 percent of the processed food comes from American produced products. Public Law 105-336 also stipulates that an SFA in Hawaii is required to purchase domestic commodities or products that are produced in Hawaii, to the extent that such products are in adequate supply for program purposes.

PROCUREMENT CONTRACTS

Section 104(e) amended section 12 of the NSLA (42 U.S.C. 1760) to stipulate that, when acquiring goods and services for programs under the NSLA or CNA, States, SAs and schools may contract with persons and companies which have provided specification information to the States, SAs or schools for use in drafting procurement specifications. The Conference Report indicates this provision is intended to encourage program administrators to obtain information from as many sources as possible to assist them in drafting procurement documents. The Conference Report further states that a potential contractor or other interested party may not participate in the procurement process through drafting the procurement specifications, procedures or documents, such as requests for proposals, invitations for bids and contracts. However, this provision does not prevent participation in a group purchasing arrangement or prevent program administrators from forming purchasing cooperatives where they are permitted. This provision is intended to ensure that program operators have sufficient flexibility in contracting matters while maintaining maximum open and free competition. This provision is consistent with current procurement practices for the NSLP and SBP. The provision parallels USDA’s clarification of this matter in the proposed rule moving the general administrative requirements for the Food and Nutrition Service entitlement programs to 7 CFR Part 3016, the Uniform Federal Assistance Regulation for State and Local Governments.

MEAL SUPPLEMENTS IN AFTERSCHOOL CARE SETTINGS

Section 108 amended section 17A of the NSLA (42 U.S.C. 1766a), the provisions authorizing reimbursement of supplements under the NSLP for schools operating afterschool care programs. First, schools operating approved afterschool care programs can receive reimbursement for supplements served to children up to age 18 and children

with disabilities. The Conference Committee indicated its intent that these programs can continue to claim reimbursement for supplements served to children who turn age 19 during the SY. To be eligible for this reimbursement, the school must operate a program (1) designed primarily to provide care for these children and (2) with an educational or enrichment purpose. The Conference Report indicates this provision is "meant to ensure that children receiving this benefit are participating in a program that provides the types of activities known to help reduce or prevent involvement in juvenile crime. It is not expected that support would be provided to members of athletic teams and others who are not participating in such activities."

Eligible afterschool care programs operating in areas served by a school in which at least 50 percent of the children enrolled in school are certified for free or reduced price school meals may receive reimbursement at the free rate for all supplements served to children through age 18. Programs in areas which do not meet the 50 percent criterion will receive reimbursement at the free, reduced price or paid rate, depending on the eligibility status of the child receiving the supplement. This provision will be the subject of a separate memorandum which will provide detailed guidance on procedures. Schools should maintain records of any meal supplements that meet current requirements served in afterschool care settings since October 1, 1998, because such supplements may be eligible for reimbursement subject to the guidance in the forthcoming memorandum.

STATE ADMINISTRATIVE EXPENSE FUNDING

Section 202(b) amended section 7(a)(6) of the CNA (42 U.S.C. 1776(a)(6)) by eliminating the previous 10 percent limit on SAE funds and State Administrative Funds (SAF) for the SFSP that may be transferred from one program to another. Now, SAs may transfer their SAE funds and SAF among the programs as they deem necessary for efficient administration of the programs.

SCHOOL BREAKFAST PILOT PROJECTS

Section 109 amended section 18(i) of the NSLA (42 U.S.C. 1769(i)) to authorize a limited number of pilot projects to reduce paperwork, simplify meal counting requirements and evaluate the effect of providing free breakfasts to all children on participation, academic achievement, attendance and dietary intake. The projects are authorized to operate for three successive school years. Despite this authorization, Congress did not appropriate funds for these projects.

NUTRITION EDUCATION AND TRAINING (NET) PROGRAM REAUTHORIZATION

Section 204 amended section 19(i) of the CNA (42 U.S.C. 1788(i)) to authorize appropriations for the continuation of the NET Program through FY 2003. However, Congress did not appropriate any funds. Therefore, States will not receive specific funding for the NET Program in FY 1999. We are committed to finding ways to ensure that the fine work done by State NET Coordinators continues. We have sent a separate letter to State NET Coordinators with copies to State Child Nutrition Program Directors discussing this development and suggesting alternative sources of funding.

FOOD SERVICE MANAGEMENT INSTITUTE

Section 110(c) amended section 21(e)(2)(A) of the NSLA (42 U.S.C. 1769b-1(e)(2)(A)) by increasing funding for the Food Service Management Institute to \$3 million a year for FYs 1999 - 2003. This represents an increase of \$1 million a year. This provision requires no action by SAs. USDA included this provision in its proposed reauthorization legislation submitted to the Congress on March 10, 1998, and introduced as S. 2166 and H.R. 3666. In developing this provision, it was USDA's intent to provide the Institute with the added resources to enable it to expand services to the CACFP. Accordingly, this additional funding will be used for this purpose.

ADEQUATE MEAL SERVICE PERIODS

Although the CNA does not address the length of meal periods, the Conference Committee stated its belief that the benefits derived from school meals depend to a large extent on the environment in which they are served. The Conference Committee called upon USDA to encourage schools to make every effort to establish meal periods that are long enough to enable children to fully consume their meals and to provide an environment conducive to eating those meals. In keeping with this statement of intent, USDA urges SAs to make local schools aware of the importance, both nutritionally and socially, of giving children sufficient time and a conducive atmosphere to eat school meals.

SUMMARY

We realize there will be a lot of work involved in implementing these provisions, particularly in light of the October 1, 1998, effective date. We will make every effort to get memoranda, notices and regulations out as quickly as possible. As always, we are available to provide you with whatever assistance we can in implementing Public

Regional Directors
State Directors

7

Law 105-336. We look forward to working closely with you to implement these historic changes. We also intend to provide additional guidance in the future, as it is needed.

[SIGNED]

STANLEY C. GARNETT
Director
Child Nutrition Division

FINAL:FNS:SNP:CND:MJWhitney:bh:11/25/98:305-2619

I: Legislative files related to reauthorization: implementation memo for sp (Nov.98)

FILE: LEGISLATION - GENERAL